

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2232

Introduced by Assembly Member La Suer

February 22, 2006

An act to amend Sections 243.4 and 1192.7 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2232, as amended, La Suer. ~~Sex offenders~~ *Sexual battery: minors.*

Existing law defines sexual battery as a person who touches an intimate part of another person while that person is unlawfully restrained, and if the touching is against the will of the victim and for the purpose of sexual arousal, sexual gratification, or sexual abuse. A felony conviction of sexual battery is punishable by imprisonment in the state prison for 2, 3, or 4 years. Existing law, as amended by initiative, which requires amendment of its provisions by a 2/3 vote of the Legislature, provides for sentencing enhancements for certain crimes categorized as "serious felonies."

This bill would provide that if sexual battery is perpetrated on a minor by a person in a "position of special trust" over that minor who is at least 3 years older than the minor, the punishment would be 2, 4, or 6 years. The bill would designate that felony as a "serious felony" for purposes of sentencing. The bill would provide that a person who is convicted of that felony who holds a professional license issued by the state would lose that license if it is relevant to the crime. Because the bill would create a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the punishment of convicted sex offenders.~~

~~This bill would state the intent of the Legislature to enact the Sexual Predator Elimination Act, which would prohibit a prosecutor who charges a person with certain sexual battery violations from presenting or entering into certain plea bargains, provide that sexual predators who commit a sexual battery against certain victims shall be sentenced to life in prison without the possibility of parole, increase the mandatory minimum sentence applicable to dangerous sexual felony offenders, provide for local ordinances relating to the residence of persons subject to registration as sexual offenders or designated as sexual predators, revise provisions relating to background screening requirements for certain noninstructional school district employees and contractors, provide for creation of the Statewide Background Screening Clearinghouse for background screening results for contractors, and increase certain criminal penalties.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 243.4 of the Penal Code is amended to
 2 read:
 3 243.4. (a) Any person who touches an intimate part of
 4 another person while that person is unlawfully restrained by the
 5 accused or an accomplice, and if the touching is against the will
 6 of the person touched and is for the purpose of sexual arousal,
 7 sexual gratification, or sexual abuse, is guilty of sexual battery. A
 8 violation of this subdivision is punishable by imprisonment in a
 9 county jail for not more than one year, and by a fine not
 10 exceeding two thousand dollars (\$2,000); or by imprisonment in
 11 the state prison for two, three, or four years, and by a fine not
 12 exceeding ten thousand dollars (\$10,000).

1 (b) Any person who touches an intimate part of another person
2 who is institutionalized for medical treatment and who is
3 seriously disabled or medically incapacitated, if the touching is
4 against the will of the person touched, and if the touching is for
5 the purpose of sexual arousal, sexual gratification, or sexual
6 abuse, is guilty of sexual battery. A violation of this subdivision
7 is punishable by imprisonment in a county jail for not more than
8 one year, and by a fine not exceeding two thousand dollars
9 (\$2,000); or by imprisonment in the state prison for two, three, or
10 four years, and by a fine not exceeding ten thousand dollars
11 (\$10,000).

12 (c) Any person who touches an intimate part of another person
13 for the purpose of sexual arousal, sexual gratification, or sexual
14 abuse, and the victim is at the time unconscious of the nature of
15 the act because the perpetrator fraudulently represented that the
16 touching served a professional purpose, is guilty of sexual
17 battery. A violation of this subdivision is punishable by
18 imprisonment in a county jail for not more than one year, and by
19 a fine not exceeding two thousand dollars (\$2,000); or by
20 imprisonment in the state prison for two, three, or four years, and
21 by a fine not exceeding ten thousand dollars (\$10,000).

22 (d) Any person who, for the purpose of sexual arousal, sexual
23 gratification, or sexual abuse, causes another, against that
24 person's will while that person is unlawfully restrained either by
25 the accused or an accomplice, or is institutionalized for medical
26 treatment and is seriously disabled or medically incapacitated, to
27 masturbate or touch an intimate part of either of those persons or
28 a third person, is guilty of sexual battery. A violation of this
29 subdivision is punishable by imprisonment in a county jail for
30 not more than one year, and by a fine not exceeding two
31 thousand dollars (\$2,000); or by imprisonment in the state prison
32 for two, three, or four years, and by a fine not exceeding ten
33 thousand dollars (\$10,000).

34 (e) (1) Any person who touches an intimate part of another
35 person, if the touching is against the will of the person touched,
36 and is for the specific purpose of sexual arousal, sexual
37 gratification, or sexual abuse, is guilty of misdemeanor sexual
38 battery, punishable by a fine not exceeding two thousand dollars
39 (\$2,000), or by imprisonment in a county jail not exceeding six
40 months, or by both that fine and imprisonment. However, if the

1 defendant was an employer and the victim was an employee of
2 the defendant, the misdemeanor sexual battery shall be
3 punishable by a fine not exceeding three thousand dollars
4 (\$3,000), by imprisonment in a county jail not exceeding six
5 months, or by both that fine and imprisonment. Notwithstanding
6 any other provision of law, any amount of a fine above two
7 thousand dollars (\$2,000) which is collected from a defendant for
8 a violation of this subdivision shall be transmitted to the State
9 Treasury and, upon appropriation by the Legislature, distributed
10 to the Department of Fair Employment and Housing for the
11 purpose of enforcement of the California Fair Employment and
12 Housing Act (Part 2.8 (commencing with Section 12900) of
13 Division 3 of Title 2 of the Government Code), including, but not
14 limited to, laws that proscribe sexual harassment in places of
15 employment. However, in no event shall an amount over two
16 thousand dollars (\$2,000) be transmitted to the State Treasury
17 until all fines, including any restitution fines that may have been
18 imposed upon the defendant, have been paid in full.

19 (2) As used in this subdivision, “touches” means physical
20 contact with another person, whether accomplished directly,
21 through the clothing of the person committing the offense, or
22 through the clothing of the victim.

23 (f) *(1) Any person who commits a sexual battery, as defined in*
24 *any subdivision of this section, on a minor who is at least three*
25 *years younger than the person, and the person is in a position of*
26 *special trust with the minor, is guilty of a felony, punishable by*
27 *imprisonment in the state prison for two, four, or six years.*

28 (2) As used in this subdivision, “position of special trust”
29 means a position occupied by a person in a position of authority
30 who, by reason of that position, is able to exercise undue
31 influence over the victim. “Position of authority” includes, but is
32 not limited to, the position occupied by a natural parent,
33 adoptive parent, stepparent, foster parent, relative, household
34 member, child care provider, person appointed by a court to be a
35 guardian of the minor, adult youth leader, adult recreational
36 director, adult athletic manager, adult coach, teacher, counselor,
37 religious leader, doctor, dentist, healthcare provider,
38 psychiatrist, psychologist, mental health care provider, lawyer,
39 security officer, law enforcement officer or employee, or
40 employer.

1 (3) *Notwithstanding Section 490 of the Business and*
2 *Professions Code, if the position of authority occupied by a*
3 *person convicted of this section was held by virtue of a*
4 *professional license or credential issued by the state, that*
5 *professional license or credential shall be immediately revoked*
6 *upon conviction of this section, and the person shall not be*
7 *eligible to reapply for that license or credential.*

8 (g) As used in subdivisions (a), (b), (c), and (d), “touches”
9 means physical contact with the skin of another person whether
10 accomplished directly or through the clothing of the person
11 committing the offense.

12 ~~(g)~~

13 (h) As used in this section, the following terms have the
14 following meanings:

15 (1) “Intimate part” means the sexual organ, anus, groin, or
16 buttocks of any person, and the breast of a female.

17 (2) “Sexual battery” does not include the crimes defined in
18 Section 261 or 289.

19 (3) “Seriously disabled” means a person with severe physical
20 or sensory disabilities.

21 (4) “Medically incapacitated” means a person who is
22 incapacitated as a result of prescribed sedatives, anesthesia, or
23 other medication.

24 (5) “Institutionalized” means a person who is located
25 voluntarily or involuntarily in a hospital, medical treatment
26 facility, nursing home, acute care facility, or mental hospital.

27 (6) “Minor” means a person under 18 years of age.

28 ~~(h)~~

29 (i) This section shall not be construed to limit or prevent
30 prosecution under any other law which also proscribes a course
31 of conduct that also is proscribed by this section.

32 ~~(i)~~

33 (j) In the case of a felony conviction for a violation of this
34 section, the fact that the defendant was an employer and the
35 victim was an employee of the defendant shall be a factor in
36 aggravation in sentencing.

37 ~~(j)~~

38 (k) A person who commits a violation of subdivision (a), (b),
39 (c), or (d) against a minor when the person has a prior felony
40 conviction for a violation of this section shall be guilty of a

1 felony, punishable by imprisonment in the state prison for two,
2 three, or four years and a fine not exceeding ten thousand dollars
3 (\$10,000).

4 *SEC. 2. Section 1192.7 of the Penal Code is amended to*
5 *read:*

6 1192.7. (a) Plea bargaining in any case in which the
7 indictment or information charges any serious felony, any felony
8 in which it is alleged that a firearm was personally used by the
9 defendant, or any offense of driving while under the influence of
10 alcohol, drugs, narcotics, or any other intoxicating substance, or
11 any combination thereof, is prohibited, unless there is insufficient
12 evidence to prove the people's case, or testimony of a material
13 witness cannot be obtained, or a reduction or dismissal would not
14 result in a substantial change in sentence.

15 (b) As used in this section "plea bargaining" means any
16 bargaining, negotiation, or discussion between a criminal
17 defendant, or his or her counsel, and a prosecuting attorney or
18 judge, whereby the defendant agrees to plead guilty or nolo
19 contendere, in exchange for any promises, commitments,
20 concessions, assurances, or consideration by the prosecuting
21 attorney or judge relating to any charge against the defendant or
22 to the sentencing of the defendant.

23 (c) As used in this section, "serious felony" means any of the
24 following:

25 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
26 (4) sodomy by force, violence, duress, menace, threat of great
27 bodily injury, or fear of immediate and unlawful bodily injury on
28 the victim or another person; (5) oral copulation by force,
29 violence, duress, menace, threat of great bodily injury, or fear of
30 immediate and unlawful bodily injury on the victim or another
31 person; (6) lewd or lascivious act on a child under the age of 14
32 years; (7) any felony punishable by death or imprisonment in the
33 state prison for life; (8) any felony in which the defendant
34 personally inflicts great bodily injury on any person, other than
35 an accomplice, or any felony in which the defendant personally
36 uses a firearm; (9) attempted murder; (10) assault with intent to
37 commit rape or robbery; (11) assault with a deadly weapon or
38 instrument on a peace officer; (12) assault by a life prisoner on a
39 noninmate; (13) assault with a deadly weapon by an inmate; (14)
40 arson; (15) exploding a destructive device or any explosive with

1 intent to injure; (16) exploding a destructive device or any
2 explosive causing bodily injury, great bodily injury, or mayhem;
3 (17) exploding a destructive device or any explosive with intent
4 to murder; (18) any burglary of the first degree; (19) robbery or
5 bank robbery; (20) kidnapping; (21) holding of a hostage by a
6 person confined in a state prison; (22) attempt to commit a felony
7 punishable by death or imprisonment in the state prison for life;
8 (23) any felony in which the defendant personally used a
9 dangerous or deadly weapon; (24) selling, furnishing,
10 administering, giving, or offering to sell, furnish, administer, or
11 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
12 methamphetamine-related drug, as described in paragraph (2) of
13 subdivision (d) of Section 11055 of the Health and Safety Code,
14 or any of the precursors of methamphetamines, as described in
15 subparagraph (A) of paragraph (1) of subdivision (f) of Section
16 11055 or subdivision (a) of Section 11100 of the Health and
17 Safety Code; (25) any violation of subdivision (a) of Section 289
18 where the act is accomplished against the victim's will by force,
19 violence, duress, menace, or fear of immediate and unlawful
20 bodily injury on the victim or another person; (26) grand theft
21 involving a firearm; (27) carjacking; (28) any felony offense,
22 which would also constitute a felony violation of Section 186.22;
23 (29) assault with the intent to commit mayhem, rape, sodomy, or
24 oral copulation, in violation of Section 220; (30) throwing acid or
25 flammable substances, in violation of Section 244; (31) assault
26 with a deadly weapon, firearm, machinegun, assault weapon, or
27 semiautomatic firearm or assault on a peace officer or firefighter,
28 in violation of Section 245; (32) assault with a deadly weapon
29 against a public transit employee, custodial officer, or school
30 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
31 discharge of a firearm at an inhabited dwelling, vehicle, or
32 aircraft, in violation of Section 246; (34) commission of rape or
33 sexual penetration in concert with another person, in violation of
34 Section 264.1; (35) continuous sexual abuse of a child, in
35 violation of Section 288.5; (36) *sexual battery of a minor by a*
36 *person in a position of special trust, in violation of subdivision (f)*
37 *of Section 243.4*; (37) shooting from a vehicle, in violation of
38 subdivision (c) or (d) of Section 12034; ~~(37)~~ (38) intimidation of
39 victims or witnesses, in violation of Section 136.1; ~~(38)~~ (39)
40 criminal threats, in violation of Section 422; ~~(39)~~ (40) any

1 attempt to commit a crime listed in this subdivision other than an
2 assault;~~(40)~~ (41) any violation of Section 12022.53;~~(41)~~ (42) a
3 violation of subdivision (b) or (c) of Section 11418; and~~(42)~~ (43)
4 any conspiracy to commit an offense described in this
5 subdivision.

6 (d) As used in this section, “bank robbery” means to take or
7 attempt to take, by force or violence, or by intimidation from the
8 person or presence of another any property or money or any other
9 thing of value belonging to, or in the care, custody, control,
10 management, or possession of, any bank, credit union, or any
11 savings and loan association.

12 As used in this subdivision, the following terms have the
13 following meanings:

14 (1) “Bank” means any member of the Federal Reserve System,
15 and any bank, banking association, trust company, savings bank,
16 or other banking institution organized or operating under the laws
17 of the United States, and any bank the deposits of which are
18 insured by the Federal Deposit Insurance Corporation.

19 (2) “Savings and loan association” means any federal savings
20 and loan association and any “insured institution” as defined in
21 Section 401 of the National Housing Act, as amended, and any
22 federal credit union as defined in Section 2 of the Federal Credit
23 Union Act.

24 (3) “Credit union” means any federal credit union and any
25 state-chartered credit union the accounts of which are insured by
26 the Administrator of the National Credit Union administration.

27 (e) The provisions of this section shall not be amended by the
28 Legislature except by statute passed in each house by rollcall
29 vote entered in the journal, two-thirds of the membership
30 concurring, or by a statute that becomes effective only when
31 approved by the electors.

32 *SEC. 3. No reimbursement is required by this act pursuant to*
33 *Section 6 of Article XIII B of the California Constitution because*
34 *the only costs that may be incurred by a local agency or school*
35 *district will be incurred because this act creates a new crime or*
36 *infraction, eliminates a crime or infraction, or changes the*
37 *penalty for a crime or infraction, within the meaning of Section*
38 *17556 of the Government Code, or changes the definition of a*
39 *crime within the meaning of Section 6 of Article XIII B of the*
40 *California Constitution.*

1 ~~SECTION 1. It is the intent of the Legislature to enact the~~
2 ~~Sexual Predator Elimination Act, which would do all of the~~
3 ~~following:~~

4 ~~(a) Prohibit a prosecutor who charges a person with certain~~
5 ~~sexual battery violations from presenting or entering into certain~~
6 ~~plea bargains.~~

7 ~~(b) Provide that sexual predators who commit a sexual battery~~
8 ~~against certain victims shall be sentenced to life in prison without~~
9 ~~the possibility of parole.~~

10 ~~(c) Increase the mandatory minimum sentence applicable to~~
11 ~~dangerous sexual felony offenders.~~

12 ~~(d) Provide for local ordinances relating to the residence of~~
13 ~~persons subject to registration as sexual offenders or designated~~
14 ~~as sexual predators.~~

15 ~~(e) Revise provisions relating to background screening~~
16 ~~requirements for certain noninstructional school district~~
17 ~~employees and contractors.~~

18 ~~(f) Provide for creation of the Statewide Background~~
19 ~~Screening Clearinghouse for background screening results for~~
20 ~~contractors.~~

21 ~~(g) Provide for a statewide credential.~~

22 ~~(h) Require certain persons to inform their employer or the~~
23 ~~party with whom they are under contract and the Department of~~
24 ~~Education of a charge of a disqualifying offense within a~~
25 ~~specified period.~~

26 ~~(i) Increase criminal penalties.~~